

**NATIONAL DNA DATA BANK  
ADVISORY COMMITTEE  
ANNUAL REPORT  
2006-2007**



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## **Governance**

This report covers the period from June 2006 to June 2007. The National DNA Data Bank Advisory Committee met once in Halifax and twice in Ottawa during that period. As noted in our last annual report submitted in mid 2006, in early 2006, the Senior Executive Committee of the RCMP announced its intention to restructure the governance of the National DNA Data Bank (NDDB). From its inception in 2000, the NDDB was structured under a Branch level officer (O i/c NDDB), reporting to the Director General, RCMP Forensic Laboratory Services (RCMP FLS). The six managers of the RCMP Regional Forensic Laboratories as well as the program managers for each operational forensic discipline all report to the Director of Investigation and Enforcement Support (previously called Chief Scientific Officer). The Director of Investigation and Enforcement Support reports to the Director General. The NDDB is a National Police Services (NPS) data repository, which operates under a separate and unique privacy and security standard compared to that of the operational forensic laboratories which conduct ongoing casework. In addition, the NDDB provides services to all police agencies across Canada in a manner similar to the National Fingerprint and Criminal Records repositories. It has thus been the view of the Advisory Committee for some time, that the NDDB should be organizationally situated at arms-length from the RCMP Regional Laboratory management chain. Over the past year, significant changes have occurred and in January 2006 the Senior Executive Committee of the RCMP approved the restructuring of forensic laboratory and identification services within the RCMP. A new structure, called Forensic Science and Identification Services (FS&IS), was implemented in the spring of 2006 which realigned the reporting relationship of the NDDB. Organizationally, the NDDB is now situated in Biometric Services, with a reporting relationship, distinct from the Regional Operational Laboratories, through a Director to the Director General FS&IS. The Advisory Committee is of the view that the organizational changes are timely, progressive and consistent with the unique national responsibilities of the NDDB.

## **A Growing Data Bank**

During the past year, both the samples submitted for the Convicted Offenders Index (COI) and profiles entered into the Crime Scene Index (CSI) have continued to grow steadily. The COI contributions increased by 17,600 to slightly over 113,000 profiles. The CSI grew by 6,214 to 35,000 profiles. The two indices combined now contain over 148,000 profiles for a total growth of almost 24,000 during the year. Contribution rates have remained generally consistent with previous years with Ontario at 45%, Quebec at 17%, followed by B.C. and Alberta, both at 10%. The remaining Provinces and Territories account for 18% of the samples submitted to the NDDB. Samples from the RCMP Contract Provinces account for 38% of the submissions. Profiles uploaded to the CSI are again divided more evenly at 40% (Centre of Forensic Science, (CFS)Toronto, 32% (Laboratoire de sciences judiciaires et de Médecine Légale (LSJML) and 28% (six RCMP Regional Forensic Laboratories). During the first five years of operation, approximately 3400 matches between the COI and the CSI were reported. During the last two years, the matches reported have more than doubled to almost 7200. As expected, while the data bank continues to grow at a steady rate, the match rate continues to grow at an increasing rate. This trend is expected to continue for several years ahead.

### **Primary and Secondary Offences**

As reported previously, when the Nddb was planned and implemented, the anticipated capacity was based on projections provided by Consulting and Audit Canada. Based on an expected 18,700 submissions per year following convictions for Primary Offences (100% of 18,700) and 9,500 submissions following Secondary Offence convictions (10% of 95,000), the capacity was designed for at least 27,000 to 30,000 samples per year. Based on June 2006 to June 2007 data, the Nddb received 10,015 Primary and 8,651 Secondary samples. This corresponds to 53.6% of the expected rate for Primary submissions and 91% of the expected rate for Secondary submissions. While the submission rate for Secondary convictions is approaching the originally projected level, the submission rate following Primary convictions at 53.6% is only marginally higher than reported last year. In assessing the validity of a 100% expectation rate for DNA Orders following convictions for Primary designated offences, the Advisory Committee considered it reasonable in view of the generally accepted judicial test, i.e., the order shall be granted unless the judge is satisfied that the impact on the offender's privacy and security of person would be grossly disproportionate to the public interest in the protection of society and the proper administration of justice. The expected contribution rate for Secondary designated offence convictions was set lower, i.e., 10%, in view of the wider degree of judicial discretion available to judges following convictions for Secondary designated offences.

The AC has expressed its concern over the Primary conviction submission rate for several years and has taken steps to share that concern with the judicial community. In 2006, Advisory Committee member, the Hon. Peter Cory, corresponded with Chief Justices and Chief Judges from across Canada in a letter which outlined the Advisory Committee's concerns. The Advisory Committee itself and members individually also made presentations to several judicial community meetings, the latest being a presentation to the Nova Scotia Judicial Conference in Halifax in the fall of 2006. While a marginal increase in the rate of Primary conviction sample submissions is a positive change from last year, the Advisory Committee is still concerned with a Primary conviction submission rate of only 53.6%. When Bill C-13 and C-18 are fully proclaimed into force, many new offences will become designated and many Secondary designated offences will be escalated to Primary designated offences. It is the Advisory Committee's view that the Primary conviction submission rate will increase significantly when this occurs.

### **Nddb Effectiveness**

In conjunction with this concern and the Advisory Committee's interest in measuring the overall effectiveness of the Nddb, funding by the Department of Justice (DOJ) was approved in 2006 to support a joint study to be led by DOJ and supported by Public Safety Canada (PSC) and the RCMP. The main goal of the study is to assess effectiveness by researching the outcome of matches and eliminations made by the Nddb. We expect that the study will also provide current and perhaps, more accurate data in relation to the number of Primary convictions and resulting DNA Orders that are made across Canada. The study is presently in progress and results are expected by late 2007.

### **Judges Electronic Bench Book**

At the Nova Scotia Judicial Conference, in Halifax November 2006, the Advisory Committee was provided an opportunity to access and review the DNA component of the newly unveiled Judges Electronic Bench Book, a National Judicial Institute (NJI) computer based, self directed, learning program which describes complex legislation and legal precedents. The DNA component of the Bench Book was created as a result of a partnership established between the Executive Director of the NJI and the AC two years ago. A working committee composed of members of the Advisory Committee, the NDDB, DOJ and distinguished jurists and prosecutors recently completed the project, which is now included in the new web based version of the Bench Book now on line and available to all judges across Canada through the NJI Judicial Library. It is anticipated that the Bench Book will be updated routinely to reflect changes in legislation and judicial precedents as they occur.

### **Retroactive Sample Collection**

Following the passage and Royal Assent of the expanded retroactive provisions contained in Bill C-13 (Statutes of Canada 2005, c-25) in May of 2006, some 4012 new qualifying offenders were identified for retroactive DNA sampling. A Retroactive Collections Unit was immediately established by the O i/c NDDB and the DG of the FS&IS, and the process of conducting criminal history reviews of the potential offenders was initiated. By May of 2007, over 2900 certified application packages had been directed to Provincial Attorneys General for processing through the courts and subsequent DNA collection. Currently there are 1100 files still being researched, documented and certified by the Retroactive Collections Unit. In excess of 1300 files have now been successfully concluded with samples received, analyzed and profiles uploaded to the NDDB. The process is proceeding as planned and is expected to be completed by 2009.

### **Bill C-18**

Bill C-18 (amendments to Bill C-13) was passed by Parliament in June 2007 (Statutes of Canada 2007, C-22 -Royal Assent June 22, 2007). When both Bill C-13 and C-18 are proclaimed fully into force, they will contain a number of minor provisions to assist the NDDB in dealing with issues such as receipt of samples for non-designated offences and procedures for removing access to DNA profiles and destruction of sample material when a DNA order is quashed. The provisions now in force allow the NDDB to follow procedures for resolving moderate match results both within Canada and with foreign law enforcement agencies where there may be common DNA profiles found at crime scenes or that may identify a common offender. The provisions now in force also allow DNA to be collected from an expanded range of persons who were convicted or classified as dangerous offenders , murders , attempted murders (added by Bill C-18) or sexual offenders before June 30 , 2000 ( Retroactive DNA Data Bank Authorizations - Criminal Code s. 487.055). The two Bills also include provisions to streamline and strengthen the collection process following the issuance of a DNA order after conviction. The major changes introduced by these Bills relate to the types of offences for which a convicted offender can be ordered to provide a DNA sample. There are four categories:

1. 16 extremely serious offences where the court will have no discretion not to grant a DNA Order,

2. Primary designated offences where the court has limited discretion and the convicted offender bears the onus of convincing the court not to make an Order.
3. Listed Secondary designated offences including some hybrid offences such as criminal harassment where the court can make the Order only on application by the Crown, whether the case is prosecuted by indictment or on summary conviction, and
4. A generic category of all offences under the Criminal Code or the Controlled Drugs and Substances Act punishable by 5 years or more of jail where a court can make the order only on application by the Crown and only if the offender is prosecuted by indictment.

The legislation will upgrade many existing Secondary designated offences to Primary designated offences. In total, some 176 new offences will be added to the designated categories and it is anticipated that the amendments, once in force, will result in a considerable increase in the number of crime scene exhibits being submitted for DNA analysis to the eight operational Forensic Laboratories in Canada (6 RCMP, CFS Toronto, LSJML Montreal). It is noted by the AC that all public forensic laboratory systems in Canada are already experiencing considerable backlogs in DNA casework and thus, will face formidable fiscal, technical and human resource challenges to handle the expected casework increases.

As through-put increases at the operational laboratories, the input to both the CSI and the COI of the NDDB will increase proportionately. Since its inception in 2000, the NDDB has experienced no backlogs for processing convicted offender samples. All samples received are generally processed and uploaded within a few days. Under its current structure, with existing human resource and current instrumentation, the NDDB is capable of handling up to at least 60,000 convicted offender samples per year. The challenge to the NDDB is to ensure that it maintains and updates its methodology and technology as new procedures become available. In order to ensure continued success and utilize the full potential of the NDDB and our enabling legislative framework, resources must continue to be directed to methodology research and the validation of new technology. In a science as dynamic as forensic DNA analysis, rust-out must be avoided from a national as well as international perspective in order that technology standardization and quality of service is maintained.

### **Private DNA Laboratories**

In late 2005, the Advisory Committee was asked to review the potential role that Private, non-government DNA Laboratories may have in populating the CSI in the NDDB. In last year's Annual Report, the Advisory Committee reported its endorsement of the recommendations of the Scientific Working Group on DNA Analytical Methods (SWGDAM), i.e.,

1. That direct access to Combined DNA Identification System (CODIS) by Canadian forensic laboratories must remain solely with the recognized law enforcement related forensic laboratories that are associated with the Provinces of Ontario, Quebec and the Government of Canada through the RCMP, and
2. The 100% of all outsourced DNA data analysis must be technically reviewed by the provincial or federal participating laboratories prior to any CODIS entry into the National CSI that is maintained in the NDDB of Canada in accordance with the FBI protocol for

CODIS access.

Two private laboratories which offer their services to police agencies are located in Ontario. No DNA profiles generated by these private laboratories while under direct contract to a police agency have been uploaded into CODIS by the RCMP since there is yet no mechanism established to reimburse the RCMP Forensic Laboratory Services to review the analytical information and profiles to ensure they meet the requirements for up-loading into CODIS. The RCMP has a Standing Offer Agreement (SOA) to engage the services of a private laboratory to conduct exhibit examinations and DNA analysis on behalf of the RCMP Forensic Laboratory Services. DNA profiles that are generated by the private laboratory under the SOA are forwarded to the RCMP Forensic Laboratories for review. Only those profiles that meet the requirements for up-loading into CODIS are accepted for entry. To date, only one of the private laboratories has been qualified under the SOA.

### **Training Program**

The Training Unit of the NDDB was established prior to the opening of the NDDB in 2000. Its mandate is to provide training on DNA Legislation as well as procedures for the proper utilization of DNA kits for collecting DNA samples. The Unit has trained thousands of police officers across Canada over a 7 year period. During the past year, training and information sessions were held in six provinces (British Columbia, Alberta, Saskatchewan, Ontario, New Brunswick and Nova Scotia). Target groups included 150 RCMP Detachments, 43 municipal police services, 2 military police services and 5 groups of crown prosecutors (676 individuals received training).

At present, 8 Provinces are targeted for training in 2007/2008. In view of the legislative amendments which will come into force following the Royal Assent of Bill C-18 in several months, the training program will be particularly relevant in the coming year. As well, with ongoing retirements, transfers and promotions in police forces across Canada, continued training is required to maintain an appropriate number of police officers properly qualified to collect DNA samples at scenes of crime.

### **Five Year Parliamentary Review**

The Parliamentary Review of the DNA Legislation, originally scheduled to occur 5 years after the establishment of the NDDB, has not yet occurred. In late 2005, the Advisory Committee met to discuss and prepare a response to a draft consultation document produced by DOJ. This was preparatory to the expected upcoming 5 year review. The Advisory Committee's response is contained in last year's Annual Report. While several issues related to the NDDB have been recently reviewed by Parliament during their consideration of Bills C-13 and C-18, it is the Advisory Committee's view that a Parliamentary Review of the original legislation would be both timely and useful.

### **Familial (Kinship) Searching**

As noted in last year's Annual Report, it has been shown that novel searching methods could

allow for the expanded use of the NDDB to aid in the identification of possible criminal suspects who may be closely related to known offenders in the COI. This type of analysis has been offered by the Forensic Science Service in the United Kingdom for several years and has led to the successful identification and conviction of several offenders who would have otherwise remained unknown had familial searching not been pursued. This technique has also been used by some States in the USA, however, it is not presently being used by the FBI. The Advisory Committee is aware that the next major upgrade to the CODIS system, now being developed by the FBI, will include a software component designed to permit kinship analysis primarily targeted to assist in identifying missing persons. However the same approach could be used for familial searching if the user organization wished to pursue this particular strategy in casework investigation. The use of familial searching is presently not authorized by DNA Legislation in Canada and is not being researched by the NDDB. While the Advisory Committee will continue to follow the development of this science throughout the world, it is the Committee's view that this issue should be discussed in a public forum where both the privacy rights of citizens as well as the right of the state to utilize this technology in the interests of the justice system can be discussed in some depth. It is the Advisory Committee's understanding that many justice interest groups in Canada would be interested in participating in such a discussion. As well, Parliament may wish to consider the issue during the upcoming 5 Year Review.

#### **International Agreements – Interpol DNA Gateway**

FS&IS and RCMP legal services represent Canada on the G8 Lyon-Roma DNA Search Request Network Technical Working Group (part of the G8 Law Enforcement Projects Sub-group). This technical group has been tasked to work with Interpol in the development of a secure electronic network that will facilitate the rapid exchange of DNA data information and forensic intelligence. This exchange must be conducted in a manner that fully respects Canada's privacy and security concerns according to the DNA Identification Act. The search request network developed over the past year when fully completed will enable national DNA databases in G8 countries to directly network giving law enforcement the means to effectively establish links to crimes on different continents. This is critical to effectively combat the globalization of criminal activity and terrorism. On June 26, 2007, a live test was conducted between the NDDB of Canada and its counterparts in England (UK Forensic Science Service) and the USA (FBI Laboratories – CODIS). The test included a mock DNA profile that was sent electronically from the FBI to Canada and the UK. When it was received, it was reviewed and sent back to the originating laboratory within minutes. It is fully expected that the legal framework supporting the international exchange of DNA information and the technical electronic network once finalized, will become a model for all other Interpol member states. This will ensure that the appropriate information is exchanged between law enforcement agencies expeditiously, at the right time, with the proper levels of security and safeguards in place.

#### **Missing Persons Index (MPI)**

The Advisory Committee was apprized of the status of the Private Members Bill C-279, "An Act to amend the DNA Identification Act (establishment of indexes)" that was introduced into Parliament by Mr. Wallace and was intended to establish as part of the National DNA Data Bank, a human remains index and a missing persons index to help law enforcement agencies

search for and identify persons reported missing. After second reading in the House of Commons, the Bill was sent to Committee for consideration and returned from the Committee hearings with no clauses and a recommendation that the Public Safety Ministry report back to the Committee on the progress it was making in developing a MPI model with the Federal, Provincial and Territorial (FTP) Ministers. The result is that Bill C-279 was effectively ended but there is an expectation by the House of Common's Public Safety and National Security Committee that there will be report back to it on the progress being made in developing an alternative system for dealing with missing persons.

The Advisory Committee continues to follow the progress of discussions between PSC and the FTP Working Group in relation to the establishment of a National MPI. The Advisory Committee supports the establishment of an MPI for Canada and is of the view that it should be national in nature and associated with the Nddb. A Process Mapping exercise was conducted in Ottawa in early 2007 which involved representatives from Federal and Provincial law enforcement, CPIC, Coroners Offices, Federal and Provincial forensic laboratories, Federal and Provincial Justice Members, the Nddb and the FBI Missing Persons Program. It is the Advisory Committee's understanding that based on recommendations from this group, a proposed organizational model has been developed. Following meetings with the FPT Working Group, a final MPI Report is to be presented to a Provincial Ministers meeting in Winnipeg in November 2007.

#### **Biology Casework Analysis Agreements**

The Biology Casework Analysis Agreements (BCAA's) were originally set up as a funding mechanism for the Nddb when it was established in 2000. They were conceived as a measure to assist the funding of the Nddb at a time when federal funding was difficult to obtain as well as an initiative to encourage the submission of crime scene profiles to the Nddb from the Ontario and Quebec Forensic Laboratories. Under the BCAA's, the RCMP Contract Provinces agreed to share, with the Federal Government, the cost of biology casework analysis arising from criminal investigations of designated offences. The federal government agreed to pay a share of the cost for biology casework analysis to Ontario and Quebec, since operational funding was the mandate of the two provinces and considered a significant contribution to the national Nddb program. In 2003, linkage of this agreement to the Nddb was discontinued and the RCMP received separate funding in the amount of approx. \$900K to offset the cost of increased workload. The funding formula continued to provide Quebec and Ontario with increased resources (i.e., \$2.3M to each Laboratory 2006/07). In addition, the RCMP Forensic Laboratory Services now incur a contracting charge of \$100K per year to cover internal RCMP overhead charges for cutting the contribution cheques to the Ontario and Quebec laboratories. The RCMP has not yet received permanent funding for the operation of the Nddb, approximately \$2.7M per year. Present funding is being provided on an interim basis, year to year, from within the overall RCMP budget. The Advisory Committee has followed this issue for a number of years and has reviewed both the First and Second Evaluations of the BCA Agreements conducted in 2002 and 2006 by Consulting and Audit Canada and Government Consulting Services respectively. The latter report identified a number of problems associated with the BCAA's and ultimately

recommended that based on the obvious relevance and continuing success of the NDDB, the NDDB should receive permanent allocated funding. Upon expiry March 31, 2007, the BCAA's were extended on an interim basis while the Ministry (PSC) and Provincial/Territorial officials are engaging in ongoing discussions of the BCAA's. The AC is concerned that permanent allocated funding has not yet been provided to the NDDB. While the RCMP is committed to supporting the NDDB, it would be advantageous to provide permanent funding in order to ensure that this important national service continues with the best opportunity for success based on many competing priorities. Until the funding support is resolved, it is the Advisory Committee's view that the present arrangement is neither progressive nor effective in terms of providing long term stability to an organization which must be able to plan for rapid changes in technology and methodology over the coming years. As noted earlier in this report, the NDDB must be able to look forward and prepare to research and evaluate new technologies and methodologies which contributing laboratories are now examining with the expectation that the data generated will be compatible with systems within the NDDB.

### **Conclusion**

The AC has now been monitoring the operation of the NDDB for more than seven years and has met routinely with many representatives of both the NDDB and the users of the system. It is the view of the Advisory Committee that the NDDB is fulfilling its role both efficiently and effectively and operating appropriately within the provisions of the DNA Identification Act and associated Regulations.

### **SUBJECT MATTER EXPERTS AND GUEST SPEAKERS**

David Bird	Legal Counsel, RCMP
Dwight Bishop	Ombudsman and Privacy Commission, Nova Scotia
Joseph L. Buckle	Assistant Commissioner FS&IS
Lloyd Bunbury	Director Biometric Services, FS&IS
Thomas F. Callaghan, Ph.D.	FBI
Remi Chapadeau	Public Safety Canada (PS)
Josée Charron	DNA Training and Collections Manager NDDB
Tim Cogan, Insp.	PS
Sgt. Ian Flewwelling	NCO/ic Forensic Identification Section Halifax Police
Sylvain Lalonde	National CODIS Administrator, NDDB, FS&IS
Heather MacDonald	Biology Forensic Labs Halifax
Kathy MacEachern	CODIS Administrator Forensic Labs Halifax
Peter Martin	Deputy Commissioner NPS
Kelly Morton-Bourgon	DOJ
Mike O'Donnell	Retroactive Collection Project, NDDB
David Pimm	PS
Alison Rutherford	PS
Karen Sallows	PS
André Savoie	Retroactive Collection Project, NDDB

Cpl. Sharan Sidhu	Integrated Major Crime Unit Halifax
Geneviève Sirois	PS
Cst. Jadie Spence	Integrated Major Crime Unit Halifax
Isabelle Trudel	Program Manager Nddb
Greg Yost	Legal Counsel, DOJ

#### **FINANCIAL REPORT 2006 - 2007**

This report covers the period from June 2006 to June 2007. During that period, the National DNA Data Bank Advisory Committee met once in Halifax (November 2006) and twice in Ottawa (June 2006 and May 2007).

Financial Report June 2006 - June 2007			
Dates	Expenses	Budget	Balance
2006 June	\$14,451.00		
2006 November	\$23,759.00		
2007 May	\$17,142.00		
Total	\$55,352.00	\$50,000.00	(\$5,352.00)

